**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1256 OF 1999**

Shri. Kisan Narayan Shriram,
Age Major, Occupation Business,
representative of Vikas Hatmag
Vinkar Sahakari Sansthan, Solapur
residing at 1625, Kuchan Nagar,
Solapur.

2. Shriram Ramanna Vidap,
C/o. Suchash Hatmag Vinkar Sahakari
Mandal Niyamit, Solapur,
having address as No. 1 above. ... Petitioners

Versus

1. The State of Maharashtra,
through its Secretary to the
Ministry of Textiles, having office
at Mantralaya, Mumbai 400 032.

2. The Hon'ble minister of State,
for the Ministry of Textiles,
Mumbai.

3. The Director of Handloom, Powerloom
and Textile and Additional Registrar,
Cooperative Societies, Maharasthra
State, Nagpur.

4. Collector, Solapur.

5. Western Maharashtra Weavers
Madhyavarti Cooperative Society Ltd.
Solapur having office at 409, Sakhar
Peth, Solapur 418 005.

6. Premchand Balkrishna Pandyaji,
residing at and Post Kadegaon,
Taluka Khanapur, Dist. Sangli
representative of Kadegaon Group
Vinkari Sahakari Society Limited,
Kadegaon, Tal. Khanapur,
District. Sangli.

7. Shri. Mustafa Hajipir Mohammed
residing at Mohhi Market,
Dhule, Dist. Dhule.

8. Shri. Ramesh Bhakre,
Chairman,
Western Maharasthtra Weavers
Madhyavarti Cooperative Society
Ltd. Solapur having office at 489,
Sakhar Peth, Solapur 413 005. ... Respondents

Mr. G.S. Godbole for Petitioner.

Mr. C.R. Sonawane, A.G.P. for R. Nos. 1 to 4.

Mrs. Poonam Bhosale for R. No. 5.

Dr. V.K. Chaudhary for R. Nos. 6 and 7.

Ms. K. Rajeshwari for R. No. 8.

**CORAM : F.I. REBELLO &**
**S.P. KUKDAY,JJ.**
**DATED : MARCH 02, 2005**

ORAL JUDGMENT (Per F.I. Rebello,J.)

. Rule. Heard forthwith.

. The Petitioners are members of a cooperative society which is an affiliate of Respondent No. 5. Respondent No. 5 has members spread over various districts which were divided into two divisions which are set out below. This was the position before the appeal was disposed of by the Hon'ble Minister for State (Textiles) Mantralaya on 29.1.1999. The position of members was as under :

PUNE DIVISION :

1) Solapur 175

| | | |
|---|---|---|
| 2) | Satara | 4 |
| 3) | Sangali | 14 |
| 4) | Kolhapur | 6 |
| 5) | Pune | 11 |

MUMBAI AND NASHIK DIVISION :

| | | |
|---|---|---|
| 1) | Mumbai | 6 |
| 2) | Ratnagiri | Nil |
| 3) | Thane | 3 |
| 4) | Sindhudurga | Nil |
| 5) | Raigad | Nil |
| 6) | Ahmednagar | 44 |
| 7) | Dhule | 17 |
| 8) | Nashik | 27 |
| 9) | Jalgaon | 15 |

. In terms of the byelaws, 16 members had to be elected to respondent No. 4, one from each of the districts. Earlier a writ petition was filed before this court being Writ Petition No. 1064 of 1989 which came to be disposed of on 12.3.1989. The limited issue in that petition was whether the District Industrial Society should be given representation on board of directors. That came to be disposed of by order dated 12.3.1989.

2. Respondent No. 3, as Registrar under the provisions of the Maharashtra Cooperative Societies Act on 11.5.1990 issued notice under Rule 13(1) of the Rules framed under the Maharashtra Cooperative Societies Act proposing amendments to byelaw No. 28 being byelaw No. 28(1) to 28(8) in exercise of his powers under Section 14 of the Act. The society did not oppose amendment of byelaw No. 28(5) and byelaw No. 28(6). They however, opposed the other amendments. By the proposed byelaws, 16 seats were to be divided amongst various groups of societies as contained in the said proposed byelaws. We are really concerned with the amendment to byelaw 28(1) and byelaw No. 28(2). By byelaw No. 28(1) it was proposed that three seats were allotted to Pune division and by byelaws NO. 28(2) two seats were to be allotted to Mumbai and Nashik Divisions. As the Respondent No. 3 still insisted on the amendment of the byelaws, society preferred an appeal under Section 152 of the Cooperative Societies Act and stay was granted on 17.12.1990. It is the case of the Petitioners that on 13.4.1998 Chairman of Respondent No. 4 appeared before the Hon'ble Minister hearing the appeal and made a statement to accept all the amendment except amendment to byelaw No. 28(1)(4). Based on that a formal amendment to the byelaw was

carried out on 1.6.1998. In passing we may mention that the persons aggrieved by the rejection of the amendment to byelaw 28(1)(4) had filed petition before this court being Writ Petition No. 2041 of 1999. This court by separate judgement and order passed on 23.2.2005 allowed the said petition thereby said byelaw also now part of the byelaws.

. It is the case of the Petitioner that thereafter respondent Nos. 7 and 8 preferred another appeal to the Minister purportedly under Section 152 of the Act. By this appeal they proposed further amendment to byelaws 28(1)(a) to 28(1) and 28(2). Byelaws as proposed were that in Pune Division, Solapur should be allotted two seats and one seat be allotted to district Satara, Sangali Kolhapur and Pune. Similarly they proposed the amendment to byelaw 28(2) by which the Districts of Mumbai, Ratnagiri, Thane, Sindhudurga, Raigad and Ahmednagar were to be given one seat and the districts of Dhule, Nashik and Jalgaon were to be given one seat. It is the contention of the Petitioners that without authority from the society, the chairman appeared before the Hon’ble Minister and agreed to the amendment. Pursuant to appeal being allowed, Respondent No. 3 by order of 6.2.1999 directed respondent No. 4 to carry out

that amendment as set out earlier. It is this order which is the subject matter of the present petition.

3. On behalf of the Respondent Nos. 6 and 7, the learned counsel contends that the amendment is just and equitable and in furtherance of the cooperative principles. It is submitted that considering the number of voters that Solapur has in Pune Division and Ahmednagar has in Mumbai and Nashik Division, representation would go mainly only to societies from Solapur and Ahmednagar. It is in that context that the amendment was proposed and accepted. It is further submitted that it was open in appeal to the Minister to allow such amendment and once such amendment was allowed, society was bound to carry out the amendment. All that respondent No. 3 has done by order of 6.2.1999 is to act in furtherance of the order passed by the Hon'ble Minister.

. On the other hand, the learned counsel for the Petitioner points out that the order passed in appeal and the consequential order of 6.2.1999 are totally without jurisdiction. It is pointed out that amendment to the byelaws was proposed by Respondent No. 1 in exercise of his powers under Section 14 of the M.C.S. Act. As the society was

aggrieved they preferred an appeal. In that appeal, before the Minister based on the statement made objection to byelaws other than 28(1)(4) was not pressed. Consequently formal amendment to the byelaws was carried out on 1.6.1998. On the amendment being carried out there was total compliance with the direction issued under Section 14 and consequently it was not open to Respondent nos. 7 and 8 to prefer an appeal against the non-existing direction. It is therefore, submitted that the action is totally without jurisdiction and consequently impugned orders are liable to be set aside.

4. The amendment to the byelaws can be carried out either pursuant to the powers conferred under Section 13 and or Section 14 of the M.C.S. Act. Section 13 is the power by which the Society itself if the proposed amendment is passed at the general meeting of the society, can forward the same to the registrar for registration of the amendment to the byelaws. The registrar then has to dispose of the same within two months from the date of receipt. Procedure as set out in Sub Section 1(A) of Section 13 has to be complied. Other sub sections of Section 13 need not be adverted to.

. We then have the Section 14 which reads as under

:

(1) If it appears to the Registrar that an amendment of the bye-laws of a society is necessary or desirable in the interest of such society, he may call upon the society, in the manner prescribed to make the amendment within such time as he may specify.

(2) If the society fails to make the amendment within the time specified, the Registrar may after giving the society an opportunity of being heard and after consulting such State Federal Society as may be notified by the State Government, register such amendment and issue to the society a copy of such amendment certified by him. With effect from the date of the registration of the amendment in the manner aforesaid, the byelaws shall be deemed to have been duly amended accordingly and the byelaws as amended shall, subject to appeal (if any), be binding on the society and its members."

. Rules have been framed under the Act which are known as Maharashtra Cooperative Societies Rules, 1961. In so far as Section 14 is concerned, relevant rule is Rule 13. Relevant rule as far as

we are concerned is rule 13(2) and (13(3) which are reproduced herebelow :

> "13(2) For the purposes of sub section (2) of Section 14, the Registrar shall send a copy of the notice to the State Federal Society duly notified under that sub section with a request to offer its comments on the amendment within such time as may be specified by him. If the State Federal Society fails to offer its comments within the specified time, it may be presumed by the Registrar that the said society has no objection to the amendment.
>
> (3) If after considering the comments of the State Federal Society, if any, the Registrar considers that there is no objection to registering the amendment, he shall send a written notice in Form "F" by registered post to the registered address of the society calling upon it to show cause in writing, or through a properly authorised representative to appear before the Registrar on the date specified in the notice, as to why the

proposed amendment should not be registered within the time specified in the notice in Form "E"."

5. Perusal of Section 14 would show that the Registrar suo motu can if it appears that the amendment to the byelaw is necessary or desirable, and in the interest of justice, require the society to carry out the amendment. On failure by the Society to comply, Registrar has to follow the requirement of sub Section (2) which are (a) giving society an opportunity of being heard; (b) consulting the Federal society as may be notified by the State Government and (c) Register such amendment and issue to the society a copy of such amendment certified by him. While carrying out exercise under Sub Section (2) he has to follow the procedure laid down in sub rules (2) and (3) of Rule 13 which is that the comments of the Federal society should be invited, within the time specified and if by that time society fails to offer its comments, it is presumed that the society has no objection to the amendment. If comments have been forwarded and if the Registrar considers that there is no objection to registering the amendment, then he can by written notice call the society to show cause in writing or through a

properly authorised representative to appear before the Registrar. In other words, hearing has to be given to the society after the comments of the Federal society are received.

. In the instant case, record is not clear as to whether the comments of the Federal Society were called or whether the society itself failed to carry out the amendment. Record however, shows that the petitioners herein had preferred an appeal. It appears that ultimately it was not pressed for whatever reasons except to one byelaw. That appeal came to be dismissed and the byelaws were formally amended. In other words the direction issued under Section 14 of the M.C.S. Act was complied with. The amendment therefore, become part of the certified byelaws.

. As noted earlier, amendment to the byelaws would only be if the general body of the society passes the amendment to that effect or the Registrar directs amendment. The society admittedly after carrying out the amendment has not passed any resolution in the general body meeting the further amended byelaw No. 28, nor has the Registrar issued any direction for amendment of byelaw No. 28. Inspite of that appeal seems to have been

preferred by Respondent nos. 7 and 8. The appeal would lie under Section 152 if there be an order or decision amongst others under Section 13 and 14. When appeal was preferred by Respondent Nos. 7 and 8 there was no order or decision under Section 13. In so far as Section 14 is concerned, also at the time of filing appeal or even thereafter there was no order or decision. In other words, appeal itself was not maintainable before Respondent NO.

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6. Respondent Nos. 7 and 8 as it appears had preferred an appeal purported to be against the order directing amendment to the byelaws by Respondent No. 2 in exercise of powers under Section 14. The appeal was not in respect of the amendment of the byelaws pursuant to the said direction or rejection but the proposed amendments were totally different from what the Registrar has directed the society to do in exercise of his powers under Section 14. This respondent Nos. 7 and 8 as individuals could not have done nor could respondent No. 2 sit to exercise jurisdiction in respect of non-existing order. The assumption of jurisdiction therefore, by Respondent No. 2 in an appeal against a non existing order and thereafter allowing the appeal, even may be on the admission

of the President of Respondent No. 5 was totally without jurisdiction. Respondent No. 2 had to address himself to the question, whether there was any appellable order before him which he chose not. He purposely proceeded based on the statement made before him by the Chairman and then proceeded to allow the appeal and amendment to the byelaws as proposed by Respondent Nos. 7 and 8. The entire action was without jurisdiction and consequently the petition will have to be allowed and impugned order set aside.

. Before parting we may mention that if Respondent Nos. 7 and 8 felt need for further amendment to the byelaws of Respondent No. 5, then respondent No. 5 had to pass resolution in the general body meeting or at the highest Respondent Nos. 7 and 8 could have represented to Respondent No. 2 for amendment which they had sought in their appeal. It would then be for Respondent No. 2 if he considers for whatever reasons that the amendments are required, to direct the society under Section 14 to further amend the byelaws as proposed by him. No such exercise was undertaken instead appeal was preferred directly to the Minister. As we have noted earlier, the appeal was without jurisdiction.

In the light of that petition made absolute in terms of Prayer Clause (b).

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)